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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SHERRY SINGER and RYAN WILLIAMS,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

POSTMATES, INC.,

Defendant.

Case No. 15-1284

**COLLECTIVE AND CLASS ACTION
COMPLAINT AND JURY DEMAND**

1 **I. INTRODUCTION**

2 1. This case is brought on behalf of individuals who have worked for Postmates, Inc.
3 (“Postmates”) as couriers anywhere in the United States. Postmates is a delivery service that
4 provides couriers who can be hailed and dispatched through a mobile phone application to
5 deliver food and other items to customers at their homes and businesses.

6 2. As described further below, Postmates has misclassified Plaintiffs and other
7 similarly situated couriers as independent contractors and, in so doing, has violated the federal
8 Fair Labor Standard Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.*, by failing to pay them minimum
9 wage and overtime for all time worked. Plaintiffs bring this claim under the FLSA on behalf of
10 all similarly situated employees who may choose to opt in to this action pursuant to 29 U.S.C.
11 §216(b).

12 3. Plaintiff Sherry Singer further complains, pursuant to Rule 23 of the Federal
13 Rules of Civil Procedure, on behalf of herself and a class of other similarly situated Postmates
14 couriers who have worked in California, that Defendant has violated various provisions of the
15 California Labor Code, including: (1) Cal. Labor Code §2802 by requiring couriers to pay
16 various expenses that should have been borne by the employer; (2) Cal. Lab. Code § 226(a) by
17 failing to provide itemized wage statements; and (3) Cal. Lab. Code §§ 1197 and 1194 by failing
18 to pay minimum wage. Plaintiff Singer, on behalf of all similarly situated Postmates couriers in
19 California, seeks restitution of all wages and expenses of which they were deprived, including
20 the cost of gas, car and bicycle maintenance, parking, a phone and data plan, and public
21 transportation which they were required to bear in order to perform their jobs, and all other relief
22 to which they are entitled.

23 4. Plaintiff Ryan Williams further complains, pursuant to Rule 23 of the Federal
24 Rules of Civil Procedure, on behalf of himself and a class of other similarly situated Postmates
25 couriers who have worked in New York, that Defendant has violated 12 NYCRR 142-2.2 by
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1 failing to pay overtime wages for all hours worked in excess of forty per week and N.Y. Lab.
2 Law § 652 by failing to pay minimum wage. Plaintiff Williams, on behalf of all similarly
3 situated Postmates couriers in New York, seeks restitution of all wages and all other relief to
4 which they are entitled.

5 **II. PARTIES**

6 5. Plaintiff Sherry Singer is an adult resident of Long Beach, California, where she
7 has worked as a Postmates courier in the Los Angeles area in California.

8 6. Plaintiff Ryan Williams is an adult resident of Hoboken, New Jersey, and has
9 worked as a Postmates courier in New York.

10 7. Plaintiffs bring this action on their own behalf and on behalf of all others similarly
11 situated, namely all other individuals who have worked as couriers for Postmates throughout the
12 United States.

13 8. Defendant Postmates, Inc. ("Postmates") is a Delaware corporation,
14 headquartered in San Francisco, California.

15 **III. JURISDICTION**

16 9. This Court has general federal question jurisdiction over plaintiffs' FLSA claims
17 pursuant to 28 U.S.C. § 1331 since the plaintiffs have brought a claim pursuant to the federal
18 Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

19 10. This Court has jurisdiction over plaintiffs' California and New York state law
20 claims pursuant to 28 U.S.C. Section 1367 since they are so related to their FLSA claims that
21 they form part of the same case or controversy.

22 11. This court also has jurisdiction over Plaintiffs' state law claims pursuant to 28
23 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act ("CAFA"). The parties are diverse under
24 the requirements of CAFA, and the amount in controversy exceeds \$5,000,000, exclusive of
25 interest and costs.

12. Venue is proper in this district under 28 U.S.C. § 1391.

2 **IV. STATEMENT OF FACTS**

3 13. Postmates is a San Francisco-based courier service, that provides delivery service
4 in cities throughout the country via an on demand dispatch system.

5 14. Postmates offers customers the ability to request a courier on a mobile phone
6 application.

7 15. Postmates' website advertises that customers can "Get the best of your city
8 delivered in minutes."

9 16. Couriers receive a fee for each delivery completed and sometimes receive tips
10 from customers in addition to their delivery fees. Couriers do not receive an hourly wage.

11 17. Although classified as independent contractors, Postmates couriers are employees.
12 They are required to follow detailed requirements imposed on them by Postmates, and they are
13 graded, and are subject to termination, based on Postmates' discretion and/or their failure to
14 adhere to these requirements (such as rules regarding their conduct with customers, their
15 timeliness in picking up items and delivering them to customers, the accurateness of their orders,
16 etc.).

17 18. In addition, Postmates is in the business of providing delivery service to
18 customers, and that is the service that Postmates couriers provide. The couriers' services are
19 fully integrated into Postmates's business, and without the couriers, Postmates's business would
20 not exist.

21 19. However, based on their misclassification as independent contractors, Postmates
22 couriers are required to bear many of the expenses of their employment, including expenses for
23 their vehicles and bikes, gas, phone and data plan, and other expenses.
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1 20. In light of the expenses couriers must bear, and because Postmates requires its
2 couriers to subsist on delivery fees and tips and does not pay an hourly wage, there are times
3 when couriers do not make minimum wage for all hours worked.

4 21. In addition, couriers are not paid overtime for hours they work in excess of forty
5 per week.

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7 **V. THE NATIONWIDE COLLECTIVE ACTION**

8 22. Plaintiffs bring the first and second cause of action on behalf of themselves and
9 all other Postmates couriers who have worked for Defendant in the United States, between
10 March 19, 2012, and the date of final judgment in this matter.

11 23. Plaintiffs bring this count under 29 U.S.C. § 216(b) of the Fair Labor Standards
12 Act. Plaintiffs and other Postmates couriers are similarly situated in that they are all subject to
13 Postmates' common plan or practice of classifying couriers as independent contractors, not
14 paying them overtime for all hours worked beyond forty (40) in a given week, and not ensuring
15 that they receive at least the federal minimum wage for all weeks worked.

16 **VI. THE CALIFORNIA RULE 23 CLASS**

17 24. Plaintiff Sherry Singer brings the third, fourth, fifth and sixth causes of action as a
18 class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all
19 Postmates couriers who have worked for Postmates in California.

20 25. Plaintiff and other class members have uniformly been deprived reimbursement
21 of their necessary business expenditures.

22 26. The members of the class are so numerous that joinder of all class members is
23 impracticable.

24 27. Common questions of law and fact regarding Postmates' conduct in classifying
25 couriers as independent contractors, failing to reimburse them for business expenditures, and
26 failing to pay them overtime for all hours worked beyond forty (40) in a given week exist as to
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1 all members of the class and predominate over any questions affecting solely any individual
2 members of the class. Among the questions of law and fact common to the class are:

- 3 a. Whether class members have been required to follow uniform procedures and policies
4 regarding their work for Postmates;
5 b. Whether the work performed by class members—providing courier service to
6 customers—is within Postmates’ usual course of business, and whether such service is
7 fully integrated into Postmate’s business;
8 c. Whether these class members have been required to bear the expenses of their
9 employment, such as expenses for their vehicles, gas, phone and data plan, and other
10 expenses.
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12 28. Named Plaintiff Sherry Singer is a class member, who suffered damages as a
13 result of Defendant’s conduct and actions alleged herein.

14 29. Plaintiff Singer’s claims are typical of the claims of the class, and she has the
15 same interests as the other members of the class.

16 30. Plaintiff Singer will fairly and adequately represent and protect the interests of the
17 class. She has retained able counsel experienced in class action litigation. Her interests are
18 coincident with, and not antagonistic to, the interests of the other class members.

19 31. The questions of law and fact common to the members of the class predominate
20 over any questions affecting only individual members, including legal and factual issues relating
21 to liability and damages.

22 32. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy because joinder of all class members is impractical. Moreover,
24 since the damages suffered by individual members of the class may be relatively small, the
25 expense and burden of individual litigation makes it practically impossible for the members of
26 the class individually to redress the wrongs done to them. The class is readily definable and
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1 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
2 There will be no difficulty in the management of this action as a class action.

3 **VII. THE NEW YORK RULE 23 CLASS**

4 33. Plaintiff Ryan Williams brings the seventh and eighth causes of action as a class
5 action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all Postmates
6 couriers who have worked for Postmates in New York.

7 34. Plaintiff and other class members have uniformly been classified as independent
8 contractors rather than employees and as a consequence, have been deprived of minimum wage
9 and overtime for all hours worked.

10 35. The members of the class are so numerous that joinder of all class members is
11 impracticable.

12 36. Common questions of law and fact regarding Postmates' conduct in classifying
13 couriers as independent contractors and failing to pay them overtime for all hours worked
14 beyond forty (40) in a given week and failing to ensure they are paid at least minimum wage for
15 all weeks exist as to all members of the class and predominate over any questions affecting
16 solely any individual members of the class. Among the questions of law and fact common to the
17 class are:

18 a. Whether class members have been required to follow uniform procedures and policies
19 regarding their work for Postmates;

20 b. Whether the work performed by class members—providing courier service to
21 customers—is within Postmates' usual course of business, and whether such service is
22 fully integrated into Postmate's business;

23 c. Whether these class members have been required to bear the expenses of their
24 employment, such as expenses for their vehicles, gas, phone and data plan, and other
25 expenses.
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1 37. Named Plaintiff Ryan Williams is a class member who suffered damages as a
2 result of Defendant's conduct and actions alleged herein.

3 38. Plaintiff Williams' claims are typical of the claims of the class, and he has the
4 same interests as the other members of the class.

5 39. Plaintiff Williams will fairly and adequately represent and protect the interests of
6 the class. He has retained able counsel experienced in class action litigation. His interests are
7 coincident with, and not antagonistic to, the interests of the other class members.

8 40. The questions of law and fact common to the members of the class predominate
9 over any questions affecting only individual members, including legal and factual issues relating
10 to liability and damages.

11 41. A class action is superior to other available methods for the fair and efficient
12 adjudication of this controversy because joinder of all class members is impractical. Moreover,
13 since the damages suffered by individual members of the class may be relatively small, the
14 expense and burden of individual litigation makes it practically impossible for the members of
15 the class individually to redress the wrongs done to them. The class is readily definable and
16 prosecution of this action as a class action will eliminate the possibility of repetitive litigation.
17 There will be no difficulty in the management of this action as a class action.
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COUNT I**Failure to Pay Minimum Wage in Violation of the FLSA**

Defendant's willful conduct in failing to pay its employees the federal minimum wage, and requiring its employees to pay for the expenses of their employment (all of which contribute to them not receiving the federal minimum wage), violates the FLSA, 29 U.S.C. § 201, *et seq.* This claim is brought on behalf of a class of similarly situated individuals who may choose to "opt in" to this case, pursuant to 29 U.S.C. § 216(b).

COUNT II**Unpaid Overtime Under the FLSA**

The Fair Labor Standards Act, 29 U.S.C. §207(a)(1), states that an employee must be paid overtime, equal to one and one-half (1.5) times the employee's regular rate of pay, for all hours worked in excess of 40 per week. Postmates couriers have worked in excess of forty (40) hours per week but have not been paid this premium pay for hours worked beyond 40 in a week. As a direct and proximate result of Defendant's willful unlawful conduct, Plaintiffs have suffered and will continue to suffer lost wages and other damages. This claim is brought on behalf of a class of similarly situated individuals who may choose to "opt in" to this case, pursuant to 29 U.S.C. § 216(b).

COUNT III**Violation of Cal. Lab. Code § 2802**

Defendant's conduct, as set forth above, in misclassifying Postmates couriers as independent contractors, and failing to reimburse them for expenses they paid that should have been borne by their employer, constitutes a violation of California Labor Code Section 2802. This claim is brought on behalf of a class of similarly situated individuals who have worked for Postmates in California.

COUNT IV**Violation of Cal. Bus. & Prof. Code §17200, *et seq.***

Defendant's conduct, as set forth above, violates the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* ("UCL"). Defendant's conduct constitutes unlawful business acts or practices, in that Defendant has violated California Labor Code Section 2802. As a result of Defendant's unlawful conduct, Plaintiffs and class members suffered injury in fact and lost money and property, including, but not limited to business expenses that couriers were required to pay. Pursuant to California Business and Professions Code § 17203, Plaintiffs and class members seek declaratory and injunctive relief for Defendant's unlawful conduct and to recover restitution. Pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs and class members who worked for Postmates in California are entitled to recover reasonable attorneys' fees, costs, and expenses incurred in bringing this action.

COUNT V**Violation of Cal. Lab. Code § 226(a)**

Defendant's conduct, as set forth above, in failing to provide itemized wage statements, as required by California state law, violates Cal. Lab. Code § 226(a). This claim is brought on behalf of a class of similarly situated individuals who have worked for Postmates in California.

COUNT VI**Violation of Cal. Lab. Code §§ 1197 and 1194**

Defendant's conduct, as set forth above, in failing to pay its employees minimum wage for all hours worked as required by California law, violates Cal. Lab. Code §§ 1197 and 1194. This claim is brought on behalf of a class of similarly situated individuals who worked for Postmates in California.

COUNT VII

Violation of 12 NYCRR 142-2.2

Defendant's conduct, as set forth above, in failing to pay its employees overtime for all hours worked in excess of forty per week as required by New York state law, violates 12 NYCRR 142-2.2. This claim is brought on behalf of a class of similarly situated individuals who have worked for Postmates in New York.

COUNT VIII

Violation of N.Y. Lab. Law § 652

Defendant's conduct, as set forth above, in failing to pay its employees minimum wage for all hours worked as required by New York state law, violates N.Y. Lab. Law § 652. This claim is brought on behalf of a class of similarly situated individuals who have worked for Postmates in New York.

JURY DEMAND

Plaintiffs request a trial by jury on all of their claims.

WHEREFORE, Plaintiffs request that this Court enter the following relief:

- a. Allow other similarly situated Postmates couriers to receive notice and opportunity to opt-in to this case pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act;
- b. Certify a class action pursuant to Rule 23(b)(2) and (3) under Count III through VI and appoint Plaintiff Sherry Singer and her counsel to represent a class of Postmates couriers who have worked in California;
- c. Certify a class action pursuant to Rule 23(b)(2) and (3) under Count VII and VIII and appoint Plaintiff Ryan Williams and his counsel to represent a class of Postmates couriers who have worked in New York;
- d. Declare and find that the Defendant violated FLSA, 29 U.S.C. § 201, *et seq.* by failing to pay Plaintiffs and other similarly situated couriers the federal minimum wage and

- 1 overtime wages;
- 2 e. Declare and find that the Defendant violated Cal. Lab. Code §§ 2802, 226(a), 1194,
- 3 and 1197 by failing to reimburse the expenses of Plaintiffs and the California class,
- 4 failing to provide itemized wage statements, failing to pay minimum wage for all
- 5 hours worked, and failing to pay overtime for all hours worked;
- 6 f. Declare and find that the Defendant violated N.Y. Lab. Law § 652 and 12 NYCRR
- 7 142-2.2 by failing to pay New York couriers the minimum wage for all hours worked,
- 8 and failing to pay overtime for all hours worked;
- 9 g. Award compensatory damages, including all expenses and wages owed, in an amount
- 10 according to proof;
- 11 h. Award all costs and attorney's fees incurred prosecuting this claim;
- 12 i. Award liquidated damages;
- 13 j. Interest and costs;
- 14 k. Injunctive relief in the form of an order directing Defendant to comply with the FLSA,
- 15 California state law, and New York state law;
- 16 l. Such other relief as in law or equity may pertain.
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Respectfully submitted,

SHERRY SINGER and RYAN WILLIAMS
individually and on behalf of all others similarly
situated,

By their attorneys,

/s/ Matthew Carlson

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